ORISSA HIGH COURT, CUTTACK

W.P.(C). No.3904 OF 2003
An application under Articles 226 and 227 of the Constitution of India.

Awadesh Singh.

..... Petitioner

-Versus-

Director General, Central Industrial Security Force, Lodhi Road, C.G.O. Complex, New Delhi & others.

..... Opposite parties

For petitioner - M/s. J.K. Khuntia, H.K. Khuntia

For Opp.parties - Mr. D.K. Sahoo, CGC.

PRESENT:-
THE HON'BLE SHRI JUSTICE BISWANATH RATH

Date of hearing : 20.03.2018 Date of Judgment : 28.03.2018

Biswanath Rath, J. By filing the writ petition the petitioner challenges the impugned order of punishment vide Annexure-4 and further seeking a direction from this Court for sanctioning the increments and other benefits that has been withheld by the opposite parties on applying the punishment order impugned herein.

2. Short background involved in this case is that the petitioner after completion of his education was initially appointed as a Constable in the Office of the Central Industrial

Security Force (for short “C.I.S.F”) at Dhanbad (BCCL) in the year 1991. It is averred, while working as such, the petitioner was transferred to Ranchi in the year 1995 and continued there till his transfer to Rourkela Steel Plant in the year 1999. Subsequently, the petitioner was posted at H.E.C., Ranchi, the Office of the Deputy Inspector General Police, C.I.S.F., he was proceeded with a Departmental Proceeding under Rule-34 of the CISF Rules, 1969 under the specific article of charges that the petitioner gave a false message that the father of a constable, namely, Indrash Singh was seriously ill, for which he was to proceed with leave. This act of the petitioner invited charges of misbehavior and indiscipline. At this stage of the matter, a second article of charge involving the petitioner was issued on 06.08.1997 indicating that the petitioner slapped constable – Indrash Singh and used un-parliamentary language, even went to the extent threatening to kill said Indrash Singh. An enquiry was conducted involving the above charges. Petitioner submitted his written defence denying all such allegations and an Enquiry proceeding was conducted where the charges involving the petitioner suggested were established. In the report for involvement of allegation of serious nature suggested for serious penalty. But, however, keeping in view that the petitioner had a long career, a lenient penalty was imposed by

imposing reduction of pay by one stage for a period of one year with immediate effect. It was further directed that the petitioner will earn increments of pay during the period of reduction and on expiry of period the reduction will not have the effect of postponing his future increments. Copy of the final order is appearing at Annexure-1. Petitioner contends that for his ill-lock could not prefer any appeal involving the final order. It is after some time, i.e., after six months of the above punishment, the Deputy Inspector General, CISF issuing another memorandum of charges on 25.07.1998 directing therein the petitioner to face another enquiry under Rule-34 of the CISF Rules, 1969. In the first appendix under Article-I, it is mentioned that on 03.07.1998 in third shift duty, the petitioner was sleeping and keeping the rifle by his side without tieing the rifle chain around his waist which action of the petitioner was amounting to gross indiscipline, carelessness and negligence in duty. In the Article-II, it is stated that the petitioner has misbehaved one Head constable in the T.V. room by using un-parliamentary language. Article-III indicated that petitioner is in habit of in-disciplinary attitude like misbehaving and using un-parliamentary language with his subordinate force personnel, even after suffering a punishment order in the year 1998. Petitioner submitted his explanation denying allegations

involving all the three article of charges, ultimately the petitioner faced with a Departmental proceeding. Based on the enquiry report, finding the charges established, but once again taking the long career of the petitioner into consideration a lenient view on the punishment was awarded for stoppage of annual increments for three successive years, during which it was also directed that the petitioner will not earn any increments and stoppage of the increments with cumulative effect, as finds place at Annexure-4. After receipt of the final order of punishment vide Annexure-4 petitioner filed an appeal for exonerating him from the punishment awarded. For no decision being taken in the appeal the petitioner filed a Second Appeal before the Appellate Authority on 09.11.1999 as finds place at Annexure-5. On 01.11.1999 petitioner was informed that his appeal has been dismissed in conformity with the order of the Disciplinary Authority.

3. Filing the writ petition and assailing the impugned order at Annexure-4, Shri J.K. Khuntia, learned counsel appearing for the petitioner contended that petitioner is innocent, keeping grudge and at the instance of some errant officials time and again false charges have been inflicted involving the petitioner. Petitioner having categorically denied all such allegations, the Enquiring Authority as well as the

Appellate Authority failed in appreciating the same and the petitioner has been awarded with punishment both on account of improper consideration of the case of the petitioner as well as the authorities keeping grudge involving the petitioner. It is in the above circumstances, learned counsel appearing for the petitioner requested this Court for interfering in the impugned order.

4. Shri D.K. Sahoo, learned counsel appearing for the Union of India taking this Court to the various documents appended therein and the stand taken by the contesting opposite parties in their counter affidavits, contended that the petitioner is a habitual offender in particular type of offence and he was also penalized once prior to initiation of the Departmental proceeding involved herein. In spite of minor punishment awarded at the first instance, the petitioner has not shown any improvement in his conduct and for the minimum punishment awarded, even for the involvement of the petitioner in similar type of offence for the second time, there is no scope for interfering in such orders. A request is ultimately made to this Court for rejecting the writ petition for having no merit.

5. Considering the rival contentions of the parties, this Court finds, on his own submission of the learned counsel

appearing for the petitioner and from the admission in the pleading, it appears that the petitioner for his involving in similar type of accusation / charges has already faced a Departmental proceeding and the Departmental proceeding at the first instance has been concluded imposing minor penalty in spite of the charges involving the petitioner have been proved, this Court observes, the petitioner since satisfied with the punishment imposed by the Disciplinary Authority did not prefer any appeal. It appears that the petitioner has faced a second Departmental Proceeding which apart from involving the similar type of charges, this time the petitioner was also found remaining absent from duty during the duty hour. From the entire materials produced before this Court, this Court finds, the petitioner though denied such charges, but has failed in establishing his claim. It is on the other hand, the Department is able to establish many of the charges involving the petitioner involved in the subsequent Departmental proceeding involved herein. For petitioner's repeated facing of similar charges, it appears, petitioner is a habitual offender involving particular type of offence., more particularly a security personnel found to be sleeping and not taking care of service gun in his custody cannot be taken lightly. Petitioner's appeal has been considered in right spirit and the appeal has been dismissed. For the

observations and the findings therein, this Court finding that the petitioner has been imposed with minor penalty in spite of his already found to be guilty in the first Departmental proceeding, this Court finds, interference in such matters will give a bonus to the petitioner to continue with his temperament / attitude. Further, since the petitioner belongs to discipline service, absence from duty during the duty hour is a serious offence. For the observations made hereinabove and the findings of the Enquiry Officer as well as the Disciplinary Authority and looking to the minimal punishment imposed involving the petitioner, this Court declining to interfere with the impugned order of punishment dismisses the writ petition for having no substance. No costs.

.....
Biswanath Rath, J.

Orissa High Court, Cuttack,
The 28th day of March, 2018 /MRS